Petition

81-388

Office-Supreme Court, U.S.
FILED
AUG 28 1981
ALEXANDER L. STEVAS,
CLERK

No. . . .

IN THE

Supreme Court of the United States

October Term, 1981

ALPHA STANDARD INVESTMENT COMPANY,

Petitioner,

vs.

COUNTY OF LOS ANGELES, a body corporate and politic,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA.

RICH & EZER,
MITCHEL J. EZER,
1888 Century Park East,
Suite 1204,
Los Angeles, Calif. 90067,
(213) 277-7747,
Attorneys for Petitioner.

Parker & Son, Inc., Law Printers, Los Angeles. Phone 724-6622

Question Presented.

Does enactment of a rent control ordinance which grants a "double" automatic rent increase to landlords who have not raised rents during a specified period prior to enactment of the ordinance, but allows only a "single" automatic increase to those landlords who did raise rents during the same pre-enactment period, constitute a Bill of Attainder forbidden by Article I, Section 10 of the United States Constitution?

TABLE OF CONTENTS

Page

Question Presented i

Opinions Below 1

Jurisdiction 2

Constitutional and Statutory Provisions Involved 2

Statement of the Case 2

Reasons for Granting the Writ 5

I.

The "Rational Legislative Purpose" Test Employed in Economic Equal Protection Litigation Was Improperly Used to Decide This Bill of Attainder Case Through Reliance on the Broader Implications of This Court's Plurality Opinion in Nixon v. Administrator of General Services, and Certiorari Should Therefore Be Granted to Limit the Nixon Decision to the Unique Facts of That Case 5

A. "Punishment" in the Law of Attainder 5

B. The Nixon Opinion Should Not Be Interpreted as Authorizing Bills of Attainder Simply Because Some "Rational" Purpose Can Subsequently Be Devised to Justify the Punitive Effect of Sanctions Legislatively Imposed for Past Conduct 11

Conclusion 17

INDEX TO APPENDICES

Appendix A. Memorandum of Decision .... App. p. 1

Appendix B. Opinion of the California Court of Appeal 7

Appendix C. Order of the California Supreme Court 17

Appendix D. Los Angeles County Rent Control Ordinance, Sections 3(A), 3(B), 3(C), 4(B), and 4(C) 18

TABLE OF AUTHORITIES

Cases	Page
Blawis v. Bolin, 358 F. Supp. 349 (D. Ariz. 1973) ..	7
Cummings v. Missouri, 4 Wall. (71 U.S.) 277, 18 L.Ed. 356 (1866)	7, 8, 9, 12
Dent v. West Virginia, 129 U.S. 114, 9 S.Ct. 231, 32 L.Ed. 623 (1889)	7
Garland, Ex Parte, 4 Wall. (71 U.S.) 333, 18 L.Ed. 366 (1866)	8, 9
Garner v. Board of Public Works, 341 U.S. 716, 71 S.Ct. 909, 95 L.Ed. 1317 (1951)	11
Green v. Shumway, 39 N.Y. 418 (1868)	7
Hawker v. New York, 170 U.S. 189, 18 S.Ct. 573, 42 L.Ed. 1002 (1898)	7, 9
McDonald v. Board of Election Commissioners, 394 U.S. 802, 89 S.Ct. 1404, 22 L.Ed.2d 739 (1969) ..	16
McGowan v. Maryland, 366 U.S. 420, 81 S.Ct. 1101, 6 L.Ed.2d 393 (1961)	16
Mones v. Austin, 318 F. Supp. 653 (S.D. Fla. 1970)	6, 9
Nixon v. Administrator of General Services, 433 U.S. 425, 97 S.Ct. 2777, 53 L.Ed.2d 867 (1977)	3, 5, 11, 12, 13, 14, 15, 16, 18
Opinion to the House of Representatives, 80 R.I. 281, 96 A.2d 623 (1953)	7
Shorter, In re, Fed. Case No. 12811, 22 Fed. Cas. 16 (D. Ala. 1865)	6, 11
Trop v. Dulles, 356 U.S. 86, 78 S.Ct. 590, 2 L.Ed.2d 630 (1958)	7
United States v. Brown, 381 U.S. 437, 85 S.Ct. 1707, 15 L.Ed.2d 484 (1965)	10, 18
United States v. O'Brien, 391 U.S. 367, 88 S.Ct. 1673, 20 L.Ed.2d 672 (1968)	5, 6
Yung Sing Hee, In re, 36 Fed. 437 (D. Ore. 1888) ...	7

Page

Statutes and Constitutional Provisions

Los Angeles County Ordinance No. 11950 2

Los Angeles County Ordinance No. 11960 2

Los Angeles County Ordinance No. 11981 2

Los Angeles County Ordinance No. 11986 2

Santa Monica City Charter, Article XVIII, Section 1805(a) 16

28 U.S.C. Section 1257(3) 2

United States Constitution, Article I, Section 10 .... i, 2

No. . . .

IN THE

Supreme Court of the United States

October Term, 1981

ALPHA STANDARD INVESTMENT COMPANY,

Petitioner,

vs.

COUNTY OF LOS ANGELES, a body corporate and politic,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA.

Petitioner respectfully prays that a writ of certiorari issue to review the order of the Supreme Court of the State of California entered in this action on June 17, 1981, denying hearing and review of the decision of the Court of Appeal of the State of California for the Second Appellate District, Division Two, filed April 20, 1981, affirming the judgment of the Superior Court of the State of California for the County of Los Angeles entered on January 7, 1980.

Opinions Below.

The Minute Order of January 7, 1980 embodying the judgment of the Superior Court of the State of California for the County of Los Angeles is printed as Appendix A. The opinion of the Court of Appeal of the State of California, Second Appellate District, Division Two, affirming the

judgment of the Los Angeles Superior Court is printed as Appendix B. The order of the California Supreme Court denying hearing is printed as Appendix C.

Jurisdiction.

The decision of the California Supreme Court denying hearing was entered on June 17, 1981.

This Court has jurisdiction to review the decision of the California Court of Appeal, as to which hearing was denied by the California Supreme Court, by writ of certiorari pursuant to 28 U.S.C. § 1257(3).

Constitutional and Statutory Provisions Involved.

1. United States Constitution, Article I, Section 10:

"No State shall . . . pass any Bill of Attainder . . ."

2. Los Angeles County Ordinance No. 11950, as amended by Los Angeles County Ordinance Nos. 11960, 11981 and 11986, Sections 3(A), 3(B), 3(C), 4(B) and 4(C) (Enacted June 21, 1979; Effective July 22, 1979). The texts of those sections are printed as Appendix D.

Statement of the Case.

On June 21, 1979, the Respondent County of Los Angeles enacted a rent-control ordinance (hereinafter, the "Ordinance"). Like all rent-control laws, under the County scheme there was a rollback as of the effective date to the rent level prevailing at an earlier time — in this instance, to the rents being charged on May 31, 1978. Unlike most if not all similar enactments, however, Respondent's Ordinance provided that any landlord who had not raised rents at any time between the May 31, 1978 "rollback" date and the Ordinance's July 22, 1979 effective date could immediately impose two back-to-back 7½% rent increases, a total 15.56% increase in all, without administrative approval;

while those landlords who had increased rents at any time after May 31, 1978 were permitted only one "automatic" 7½% increase.

Petitioner, the owner of an apartment building in Los Angeles County, raised rents in its building on May 1, 1979. It brought suit in the Los Angeles Superior Court to enjoin Respondent from enforcing those sections of the Ordinance which confined Petitioner to a 7½% rather than a 15.56% automatic rent increase on grounds that any law which identifies a class (in this instance, the "Rent-Raising Landlords"), by past conduct which was innocent at the time committed (in this instance, raising rents between June 1, 1978 and July 21, 1979), and then subjects that class to consequences which have a punitive effect upon it (here, reduced future rents), is a Bill of Attainder. The Federal Question was raised at the very outset, in the Complaint filed to initiate the action; in pertinent part it states:

> "Plaintiff contends that Sections 4(B) and 4(C) [of the Ordinance] violate each and all of the following constitutional provisions:
>
> . . .
>
> (ii) United States Constitution, Article I, Section 10, which in pertinent part provides:
>
> 'No State shall . . . pass any Bill of Attainder' ". Clerk's Transcript on Appeal, p. 5, lines 13-21.

The Federal Question was continuously before the state courts thereafter, and was, indeed, the only issue briefed, argued or litigated.

The Los Angeles Superior Court concluded that under the reasoning of the plurality opinion of this Court in *Nixon v. Administrator of General Services*, 433 U.S. 425, 97 S.Ct. 2777, 53 L.Ed.2d 867 (1977), the Ordinance was not

"punitive" and therefore not a Bill of Attainder. The California Court of Appeal for the Second Appellate District affirmed in an opinion which for the most part simply quotes the decision of the trial judge. The California Supreme Court denied hearing. This Petition for Writ of Certiorari was then filed.

REASONS FOR GRANTING THE WRIT.

I.

THE "RATIONAL LEGISLATIVE PURPOSE" TEST EMPLOYED IN ECONOMIC EQUAL PROTECTION LITIGATION WAS IMPROPERLY USED TO DECIDE THIS BILL OF ATTAINDER CASE THROUGH RELIANCE ON THE BROADER IMPLICATIONS OF THIS COURT'S PLURALITY OPINION IN NIXON V. ADMINISTRATOR OF GENERAL SERVICES, AND CERTIORARI SHOULD THEREFORE BE GRANTED TO LIMIT THE NIXON DECISION TO THE UNIQUE FACTS OF THAT CASE.

Dissenting in *Nixon v. Administrator of General Services*, Chief Justice Burger observed that

> "It may be, as three justices intimate in their concurring opinions, that today's holding will be confined to this particular 'class of one'; if so, it may not do great harm to our constitutional jurisprudence but neither will it enhance the Court's credit in terms of adherence to stare decisis. Only with future analysis, in perspective, and free from the 'hydraulic pressure' Holmes spoke of, will we be able to render judgment on whether the Court has today enforced the Constitution or eroded it." (433 U.S. at 545).

This case demonstrates that *Nixon* has eroded the Constitution; that Mr. Justice Brennan's plurality opinion is being read in a manner which significantly undermines the fundamental libertarian guarantee contained in the Constitution's Bill of Attainder Clause; and that unless this Court acts to redress the imbalance *Nixon* will continue to haunt all future Attainder litigation in this country.

A. "Punishment" in the Law of Attainder.

In *United States v. O'Brien*, 391 U.S. 367, 88 S.Ct. 1673, 20 L.Ed.2d 672 (1968), this Court held:

> "In determining whether a particular statute is a bill of attainder, the analysis necessarily requires an inquiry

> into whether the three definitional elements — specificity in identification, punishment, and lack of a judicial trial — are contained in the statute." (391 U.S. at 383 n. 30).

The opinion of the trial judge (which was incorporated and affirmed by the California Court of Appeal) accepted Petitioner's submission that the County's Rent Control Ordinance embodied two of the three elements of a Bill of Attainder: Specificity in identification; and lack of a judicial trial. (Appendix A) The California courts, however, disagreed that the Ordinance was punitive in character. To reach that conclusion, though, they utilized the "rational legislative purpose" test of the economic equal protection cases. It is Petitioner's position that in this field, "rational legislative purpose" is an illegal import, and that its invocation has substantially eroded the distinction between "punishment" and "regulation" previously employed to determine if a challenged enactment is a bill of attainder.

"When a statute is challenged as a bill of attainder, the central inquiry must be whether the disability imposed by the act is 'punishment' or whether it is a 'regulation'." *Mones v. Austin*, 318 F.Supp. 653, 657 (S.D. Fla. 1970). What, then, is punishment, and what regulation?

> "What is punishment? Is it not the absolute or partial deprivation or curtailment of some right or enjoyment previously possessed?" *In re Shorter*, Fed. Case No. 12811, 22 Fed. Cas. '6, 19 (D. Ala. 1865).
>
> " 'Some punishments,' says Blackstone, 'consist in exile or banishment, by abjuration of the realm or transportation; others in loss of liberty by perpetual or temporary imprisonment. Some extend to confiscation by forfeiture of lands or movables, or both, *or of the profits of land for life;* others induce a disability of holding offices or employments, being heirs, executors

and the like." (Emphasis added) *Cummings v. Missouri*, 4 Wall. (71 U.S.) 277, 321, 18 L.Ed. 356 (1866).

Deprivation of the right to vote is punishment. *Green v. Shumway*, 39 N.Y. 418, 421-422 (1868). So is the termination of other political rights. *Blawis v. Bolin*, 358 F.Supp. 349, 354 (D. Ariz. 1973) ("Fundamental political rights of a stated class are terminated . . . The suggestion that the elimination without recourse of these rights is not punishment, but is regulatory, is frivolous. There is no attempt here to regulate political activity based on adjudication in an appropriate forum (citation). The statute is a punishment of a named group upon a legislative finding of guilt"). Denaturalization is punishment. *Trop v. Dulles*, 356 U.S. 86, 78 S.Ct. 590, 2 L.Ed.2d 630 (1958). So is banishment. *In re Yung Sing Hee*, 36 Fed. 437 (D. Ore. 1888). Indeed, even barring from government employment relatives within a certain degree of consanguinity to those already employed ("nepotism") is punishment within the Bill of Attainder Clause. *Opinion to the House of Representatives*, 80 R.I. 281, 96 A.2d 623 (1953) (The past conduct there was being born — into the "wrong" family).

The line between "punishment" and "regulation" was established by this Court in *Dent v. West Virginia*, 129 U.S. 114, 9 S.Ct. 231, 32 L.Ed. 623 (1889), and *Hawker v. New York*, 170 U.S. 189, 18 S.Ct. 573, 42 L.Ed. 1002 (1898). *Dent* involved a West Virginia statute imposing new qualifications upon persons already engaged in the practice of medicine: "It authorizes an examination of the applicant by the board of health as to his qualifications when he has no evidence of them in the diploma of a reputable medical college in the school of medicine to which he belongs, or has not practiced in the State a designated period before March 1881." The statute was challenged as a Bill of At-

tainder on the theory that it punished (deprived Dent of the right to practice his profession) by reason of his past conduct — being trained in a manner other than that which West Virginia law later demanded. Much of the opinion was devoted to a discussion of the two great post-Civil War attainder cases — *Cummings v. Missouri*, 4 Wall. (71 U.S.) 277, 18 L.Ed. 356 (1866); and *Ex Parte Garland*, 4 Wall. (71 U.S.) 333, 18 L.Ed. 366 (1866):

> "As many of the acts from which the parties were obliged to purge themselves by the oath had no relation to their fitness for the pursuits and professions designated, the court held that the oath was not required as a means of ascertaining whether the parties were qualified for those pursuits and professions, but was exacted because it was thought that the acts deserved punishment, and that for many of them there was no way of inflicting punishment excepted by depriving the parties of their offices and trusts. A large portion of the people of Missouri were unable to take the oath, and as to them the court held that the requirement of its constitution amounted to a legislative deprivation of their rights. Many of the acts which the parties were bound to deny that they had ever done were *innocent at the time they were committed*, and the deprivation of a right to continue in their offices if the oath were not taken was held to be a penalty for a past act, which was violative of the constitution . . . In the second case mentioned — that of Ex Parte Garland — . . . the oath related to past acts, and its object was to exclude from practice in the courts parties who were unable to affirm that they had not done the acts specified; and, as it could not be taken by large classes of persons, it was held to operate against them as a legislative decree of perpetual exclusion . . . The court held that the law, in exacting the oath as to his past conduct as a condition of his continuing in the practice of his profession, im-

> posed a penalty for a past act, and in that respect was subject to the same objection as that made to the clauses of the constitution of Missouri, and was therefore invalid . . . The constitution of Missouri and the act of congress in question in those cases were designed to deprive parties of their right to continue in their professions for past acts, or past expressions of desires and sympathies, many of which had no bearing upon their fitness to continue in their professions." (Emphasis added) (129 U.S. at 126-28).

This Court concluded that the West Virginia regulation differed fundamentally from that involved in *Cummings* and *Garland*, as its intention was not to punish for past conduct but legitimately to regulate the qualifications of a professional practitioner: "The law of West Virginia was intended to secure such skill and learning in the profession of medicine that the community might trust with confidence those receiving a license under the authority of the state." (129 U.S. at 128).

Hawker excluded convicted felons from the practice of certain professions: "Felons are also excluded from obtaining such a license, not as an additional punishment, but because the conviction of a felony is evidence of the unfitness of such persons as a class . . . Such legislation is not to be regarded as a mere imposition of additional penalty, but as prescribing the qualifications for the duties to be discharged and the position to be filled, and naming what is deemed to be, and what is in fact, appropriate evidence of such qualifications." (170 U.S. at 197, 201). Accord, *Mones v. Austin*, 318 F.Supp. 653, 658 (S.D. Fla. 1970) (Law excluding persons convicted of bookmaking from racetracks: "The object of the legislative concern is clearly the activity, bookmaking, and the status of the plaintiff, a person convicted of bookmaking, and thus the disqualifi-

cation, while harsh and unpleasant, is not such punishment as is prohibited by the United States Constitution as a bill of attainder").

There is no regulation here. Regulation is the legitimate control of future conduct. "Legitimate" is the operative word. It is regulation if, although based upon past conduct, the law establishes a legitimate qualification for engaging in future activity. The convicted felon cannot practice law; the improperly-trained physician cannot practice medicine; and the bookmaker cannot spend his afternoons at the track. It is a Bill of Attainder if the law uses an innocent past act to classify — identify — individuals, and then bars them from some future activity in which they are qualified to engage and from which their past act does not legitimately disqualify them from engaging. The Southern sympathizer can preach, or teach, or practice law, the communist can be a labor union officer,[1] and the Mayor's fourth cousin can be the janitor at City Hall, since there is no *legitimate* relationship between what they have done or been in the past and their right in the future to engage in a lawful vocation.

So, here, the Ordinance uses past conduct — the raising of rents at any time after May 31, 1978 — which was an innocent act when committed, to classify those landlords into an identifiable group, and then bars them from a future activity — the charging of the highest possible legal rent under the County rent control law — which their past act of raising rents does not legitimately disqualify them from doing. That, as Mr. Justice Black so cogently observed, is punishment:

---

[1]*United States v. Brown*, 381 U.S. 437, 85 S.Ct. 1707, 15 L.Ed.2d 1484 (1965).

> "Deprivation of a man's means of livelihood by reason of past conduct, not subject to this penalty when committed, is punishment whether he is a professional man, a day laborer who works for private industry, or a government employee."[2]

Or a landlord. And that holds true, we suggest, whether the deprivation is total or, as in this case, partial, for the cases specifically refer to both. *E.g., In re Shorter* (quoted page 6, *supra*).

B. The Nixon Opinion Should Not Be Interpreted as Authorizing Bills of Attainder Simply Because Some "Rational" Purpose Can Subsequently Be Devised to Justify the Punitive Effect of Sanctions Legislatively Imposed for Past Conduct.

In the California courts, it was held that under Mr. Justice Brennan's definition of "punishment" in *Nixon v. Administrator of General Services,* Respondent's rent control scheme is not punitive:

> "The most recent expression of the U.S. Supreme Court on the problem is *Nixon v. Administrator of General Services,* 433 U.S. 425, 53 L.Ed.2d 867, 97 S.Ct. 2777 (1977), where a congressional enactment regulating control of Mr. Nixon's papers was challenged as a bill of attainder. The portion of Justice Brennan's opinion on the bill of attainder point was apparently concurred in by 6 justices and is taken by this court as the definitive guide to the question of what is 'punishment' for purposes of a bill of attainder.

---

[2]*Garner v. Board of Public Works*, 341 U.S. 716, 735, 71 S.Ct. 909, 95 L.Ed. 1317 (1951) (Dissenting Opinion of Justices Black and Douglas).

Justice Brennan first makes the point that (433 U.S. at pp. 472-473):

"Forbidden legislative punishment is not involved merely because the act imposes burdensome consequences. Rather, we must inquire further whether Congress . . . 'inflicted punishment' within the constitutional proscription against bills of attainder."

Accordingly, "burden" alone does not punishment make. The opinion then discusses three approaches to determining whether the legislatively inflicted burden or consequence is "punishment." In essence, they are:

1. An historical approach, examining whether the burden is like those usually associated with bills of attainder or bills of pains and penalties.
2. A motivational approach, examining whether a desire to penalize is discernible in the legislative history.
3. A functional approach, examining the question of whether the burden imposed "can be said to further nonpunitive legislative purposes."

The first two categories may be quickly discarded here. First, nothing like the traditional death, imprisonment, banishment, or property seizure consequence of prior action has been imposed by the Board of Supervisors.[3] Second, no convincing evidence of punitive (as opposed to regulatory) intention is presented

---

[3]We disagree. Future rents, a classical target of bills of attainder, have been negatively seized by preclusion. See *Cummings v. Missouri*, 4 Wall. (71 U.S.) 277, 321, 18 L.Ed. 356 (1866), quoted at pp. 6-7 *supra*.

from the legislative consideration of the ordinance.[4] Justice Brennan's words seem apposite here (433 U.S. at 480):

". . . the decided absence from the legislative history of any congressional sentiments expressive of this purpose (motivation to punish) is probative of nonpunitive intentions and largely undercuts a major concern that prompted the bill of attainder prohibition: the fear that the legislature, in seeking to pander to an inflamed popular constituency, will find it expedient openly to assume the mantle of judge — or worse still, lynch mob."

Accordingly, the 'functional' approach is the critical one here. The Brennan opinion says (433 U.S. at 475-482):

"But our inquiry is not ended by the determination that the Act imposes no punishment traditionally judged to be prohibited by the Bill of Attainder Clause. Our treatment of the scope of the Clause has never

---

[4] The reference is to the "get the gougers" atmosphere which prevailed when the Los Angeles County Board of Supervisors enacted the Ordinance. The May 31, 1978 "rollback" date was a few days prior to adoption of "Proposition 13", which significantly reduced property taxes for landlords as well as homeowners. All landlords who raised rents after the Proposition 13 "windfall" were indiscriminately regarded by the Board of Supervisors as "gougers" deserving of punishment, which the Board imposed by limiting them to a single rent increase, while "rewarding" the other landlords — those who had not raised rents after enactment of Proposition 13 — by giving them a double increase. In Petitioner's case, however, as was true of almost all affected landlords, rents were increased on May 1, 1979, almost a year after enactment of Proposition 13, and then only because it was on May 1, 1979 that the City of Los Angeles, which already had a rent-control law in force, allowed all landlords to impose a limited increase. The Los Angeles metropolitan area, which is a crazy quilt of jurisdictions, is home to countless landlords, such as Petitioner, who own buildings in both the City and the County; when the City allowed its limited increase on May 1, 1979, it was imposed by the landlords in all their buildings, without regard to location, without intent to "gouge", and most certainly without any warning that the modest increase would be used as a club against them by the County when it enacted its rent-control law a few months later.

precluded the possibility that new burdens and deprivations might be legislatively fashioned that are inconsistent with the bill of attainder guarantee. The Court, therefore, often has looked beyond mere historical experience and has applied a functional test of the existence of punishment, analyzing whether the law under challenge, viewed in terms of the type and severity of burdens imposed, reasonably can be said to further nonpunitive legislative purposes . . . Where such legitimate legislative purposes do not appear, it is reasonable to conclude that punishment of individuals disadvantaged by the enactment was the purpose of the decisionmakers. The (Presidential Recordings and Material Preservation) law plainly must be held to be an act of nonpunitive legislative policymaking. Legislation designed to guarantee the availability of evidence for use at criminal trials is a fair exercise of Congress' responsibility to the due process of law in the fair administration of criminal justice . . ."

In short, we are looking for a "legitimate legislative purpose" to justify the burden placed on a particular class. While the language used is similar to that commonly found in Equal Protection Clause analysis, its function here is different; if a "legitimate legislative purpose" is found, it leads to the conclusion that the legislative "purpose" was not "punishment."

Minute Order of January 7, 1980 (Appendix A); Opinion of the Court of Appeal (Appendix B).

What the California Courts overlooked, however, are two key passages in the "punishment" segment of Mr. Justice Brennan's *Nixon* opinion. Thus, at a point before the discourse quoted above begins, Mr. Justice Brennan had tersely and accurately observed:

"The infamous history of bills of attainder is a useful starting point in the inquiry whether the Act fairly can

> be characterized as a form of punishment leveled against appellant. Generally addressed to persons considered disloyal to the Crown or State, 'pains and penalties' historically consisted of a wide array of punishments: commonly included were imprisonment, banishment, *and the punitive confiscation of property* by the sovereign . . . Section 105 of the Act makes provision for an award by the District Court of 'just compensation.' This undercuts even a colorable contention that the Government has punitively confiscated appellant's property, for the 'owner thereby is to be put in the same position monetarily as he would have occupied if his property had not been taken.' " (Emphasis added) (433 U.S. at 473-75).

That passage alone completely distinguishes *Nixon* from this case, as Respondent will *not* compensate the Rent-Raising Landlords for the rentals they have lost through being deprived of the right to charge the highest legal rent for their property. In other words, the confiscation of property here, being uncompensated, is ipso facto punitive.

Moreover, in concluding his "punishment" discussion, Mr. Justice Brennan marked out a far more fruitful line of inquiry than "legitimate legislative purpose", which the state courts also chose to ignore:

> "One final consideration should be mentioned in light of the unique posture of this controversy. In determining whether a legislature sought to inflict punishment on an individual, it is often useful to inquire into the existence of *less burdensone alternatives* by which that legislature (here Congress) could have achieved its legitimate nonpunitive objectives." (Emphasis added) (433 U.S. at 482).

In the present case, a less burdensome alternative could easily have been fashioned simply by establishing a uniform automatic rent increase for all landlords, such as was done

by the City of Santa Monica (Santa Monica City Charter Article XVIII, Section 1805(a)), rather than creating two classes (the Rent-Raising Landlords and the Other Landlords), and then denying the Rent-Raising Landlords the right to raise their rents, after first complying with the uniform rollback applicable to *all* landlords, to the same level as was allowed to the Other Landlords.

In short, "legitimate legislative purpose" does not appear to have been the *ratio decidendi* of the *Nixon* plurality opinion, but, rather, only a partial explanation of why this Court reached the conclusions it did in that unique controversy. Nonetheless, this case demonstrates that *Nixon* can and will be misread until this Court clarifies its position.

It is respectfully but most forcefully suggested that this Court should hold that "legitimate" or "rational" legislative purpose simply has no place in our Bill of Attainder jurisprudence. It is an equal protection standard, devised to keep courts from interfering with the economic experiments of legislatures while leaving them free to deal with violations of fundamental liberties. *McDonald v. Board of Election Commissioners*, 394 U.S. 802, 809, 89 S.Ct. 1404, 22 L.Ed.2d 739 (1969); *McGowan v. Maryland*, 366 U.S. 420, 425-426, 81 S.Ct. 1101, 6 L.Ed.2d 393 (1961). Using "legitimate legislative purpose" in the "economic" equal protection cases, the courts not only scour the record for something which might conceivably justify the statute before them, but sometimes go so far as to ascribe a "legitimate purpose" to the legislation which even its author, the legislature, had not perceived. That is precisely what the California courts did here:

> "We turn, therefore, to the County's justification for the burden placed on the class. Nothing in the 'Declaration of Purpose' enacted with the ordinance bears on the question at issue. However, County Coun-

sel offers the following explanation of the difference in treatment among landlords:

* * *

In essence, the reasoning is that the number of administrative proceedings to obtain extra increases would be reduced. The reasoning appears to be that landlords not increasing rents after May 31, 1978, would have a larger need for additional gross income to take care of maintenance deferred in the period of no increases. The rationale appears speculative and the reasoning, therefore, somewhat weak, but the court cannot say that there is no rational relationship to a legitimate legislative purpose." Minute Order of January 7, 1980 (Appendix A); Opinion of the Court of Appeal (Appendix B).

But here we are dealing with a "fundamental interest", so fundamental, in fact, that it was included in the original U.S. Constitution, and not in the later-engrafted Bill of Rights. This is not a case for devising "rational" purposes which the authors of the legislation, the Los Angeles County Board of Supervisors, themselves did not conceive. Indeed, it is pragmatically impossible for any court, assisted (as it was here) by able counsel, and with the advantage of hindsight, not to find some "rational" purpose in even the most bizarre legislation. That is why equal protection attacks on economic legislation have become, for all practical purposes, a dead letter. But if "rational legislative purpose" is also all that is to be required in order to avoid the taint of Attainder, then what the Framers conceived as perhaps the most essential of all our libertarian guarantees will have disappeared as if it were a thistle in a hurricane.

Conclusion.

Rejection of the "rational" or "legitimate" legislative purpose test as the standard governing Bill of Attainder litigation, and the return to the principles enunciated in

United States v. Brown, 381 U.S. 437, 85 S.Ct. 1707, 14 L.Ed.2d 484 (1965), is an imperative. The problems created by the *Nixon* opinion are compelling, and of significant constitutional magnitude. They can and should be resolved now; this case presents the opportunity to do so; and the within Petition for Writ of Certiorari should, therefore, be granted.

Respectfully submitted,

RICH & EZER,

MITCHEL J. EZER,

By MITCHEL J. EZER,

Attorneys for Petitioner.

APPENDIX A.

Memorandum of Decision.

This application for preliminary injunction was previously submitted. It is now denied.

At stake is a challenge to the portion of the County's rent control ordinance which allows a larger percentage increase in rents to landlords who have not raised rents since May 31, 1978, than to those who have. Plaintiff, a landlord who increased its rents since May 31, 1978, challenges the constitutionality of the relevant portion of the ordinance as a "bill of attainder." A reading of plaintiff's excellent points and authorities quickly disabuses one of any notion that the challenge is frivolous or lightly made despite its uniqueness. A substantial argument is made and must be dealt with on that basis.

A bill of attainder is "punishment" directly inflicted by the legislature on a person or specified class for an action or status taken or existing prior to the date of the enactment. Historically, it involved the punishment of death legislatively imposed, but by judicial construction in the United States, the Bill of Attainder Clause also prohibits a "bill of pains and penalties" by which lesser punishment (banishment, punitive seizure of property, imprisonment, etc.) is legislatively imposed on a particular individual or class.

Sections 4B and 4C of Ordinance 11,950 reads as follows:

> "B. For a rental unit which has not had a rent increase (whether imposed by the landlord or any predecessor landlord) since May 31, 1978, the landlord may increase the rent for said rental unit by an amount not to exceed 7.5 percent.
>
> C. A landlord may increase the rent on any rental unit not more often than once within the twelve (12) month period following the effective date of this or-

> dinance by an amount not to exceed 7.5 percent. Any increase in rent pursuant to this paragraph shall be in addition to any increase in rent pursuant to paragraph B of this section. . . ."

The ordinance questioned here singles out a particular class — landlords who have legally raised rents after May 31, 1978 — and provides that they may not raise rents to the same level which may be used by other landlords who have not so raised rents. Accordingly, it must be said that the legislative body has singled out a particular class and imposed consequences on it not imposed on others by reason of action not illegal when done. If the difference in treatment may be said to be "punishment," the treatment imposed would appear to fall under the prohibition of the Bill of Attainder Clause.

The focus of the case, therefore, must be as to whether the treatment of plaintiff (and others in the same category) is "punishment" within the meaning of the Bill of Attainder Clause.

The most recent expression of the U.S. Supreme Court on the problem is *Nixon v. Administrator of General Services*, 433 U.S. 425, 53 L.Ed.2d 867, 97 S.Ct. 2777 (1977), where a congressional enactment regulating control of Mr. Nixon's papers was challenged as a bill of attainder. The portion of Justice Brennan's opinion on the bill of attainder point was apparently concurred in by 6 justices and is taken by this court as the definitive guide to the question of what is "punishment" for purposes of bill of attainder.

Justice Brennan first makes the point that (433 U.S. at pp. 472-473):

> "Forbidden legislative punishment is not involved merely because the act imposes burdensome consequences. Rather, we must inquire further whether Con-

> gress . . . 'inflicted punishment' within the constitutional proscription against bills of attainder."

Accordingly, "burden" alone does not punishment make.

The opinion then discusses three approaches to determining whether the legislatively inflicted burden or consequence is "punishment." In essence, they are:

1. An historical approach, examining whether the burden is like those usually associated with bills of attainder or bills of pains and punishments.

2. A motivational approach, examining whether a desire to penalize is discernible in the legislative history.

3. A functional approach, examining the question of whether the burden imposed "can be said to further nonpunitive legislative purposes."

The first two categories may be quickly discarded here. First, nothing like the traditional death, imprisonment, banishment, or property seizure consequence of prior action has been imposed by the Board of Supervisors. Second, no convincing evidence of punitive (as opposed to regulatory) intention is presented from the legislative consideration of the ordinance. Justice Brennan's words seem apposite here (433 U.S. at 480):

> ". . . the decided absence from the legislative history of any congressional sentiments expressive of this purpose [motivation to punish] is probative of nonpunitive intentions and largely undercuts a major concern that prompted the bill of attainder prohibition: the fear that the legislature, in seeking to pander to an inflamed popular constituency, will find it expedient openly to assume the mantle of judge — or worse still, lynch mob."

Accordingly, the "functional" approach is the critical one here. The Brennan opinion says (433 U.S. at 475-482):

> "But our inquiry is not ended by the determination that the Act imposes no punishment traditionally judged to be prohibited by the Bill of Attainder Clause. Our treatment of the scope of the Clause has never precluded the possibility that new burdens and deprivations might be legislatively fashioned that are inconsistent with the bill of attainder guarantee. The Court, therefore, often has looked beyond mere historical experience and has applied a functional test of the existence of punishment, analyzing whether the law under challenge, viewed in terms of the type and severity of burdens imposed, reasonably can be said to further nonpunitive legislative purposes . . . Where such legitimate legislative purposes do not appear, it is reasonable to conclude that punishment of individuals disadvantaged by the enactment was the purpose of the decisionmakers. The [Presidential Recordings and Material Preservation] law plainly must be held to be an act of nonpunitive legislative policymaking. Legislation designed to guarantee the availability of evidence for use at criminal trials is a fair exercise of Congress' responsibility to the due process of law in the fair administration of criminal justice. . . ."

In short, we are looking for a "legitimate legislative purpose" to justify the burden placed on a particular class. While the language used is similar to that commonly found in Equal Protection Clause analysis, its function here is different; if a "legitimate legislative purpose" is found, it leads to the conclusion that the legislative "purpose" was not "punishment."

We turn, therefore, to the County's justification for the burden placed on the class. Nothing in the "Declaration of Purpose" enacted with the ordinance bears on the question at issue. However, County Counsel offers the following explanation of the difference in treatment among landlords:

"In the instant case, there is a rational relationship to a legitimate legislative purpose. Recognizing the severe shortage of residential rental housing and the rising rents exploiting such shortage, the Board of Supervisors sought to restrict rents as much as possible while at the same time permitting landlords in all cases to realize a just and reasonable return on their rental units. Thus, under the statutory scheme, all landlords were permitted to charge, without special application to the County Rent Adjustment Commission, the rent in effect on May 31, 1978, plus 7½% thereof. However, the Board of Supervisors recognized that there were some landlords who had not increased rents for an appreciable period of time. In many cases this occurred where landlords wished to cooperate with and treat kindly those senior citizens on fixed incomes finding it increasingly more difficult to live within their budget. However, many landlords foregoing such rental increases may have deferred maintenance and upkeep of their buildings. Because of such deferred maintenance and for other reasons, it is likely that in many cases the May 31st rent plus 7½% would be insufficient to permit these landlords to realize a just and reasonable return. Thus by permitting these landlords an additional 7½%, the number of special applications for a rent increase based on the inability to obtain a just and reasonable return would be reduced.

It might also be pointed out that since such landlords had not in the past exploited the critical shortage of rental housing, it could reasonably be assumed that rent increases would be imposed in the future on a limited and reasonable basis and that the danger of exploitation would not be present."

In essence, the reasoning is that the number of administrative proceedings to obtain extra increases would be reduced. The reasoning appears to be that landlords not in-

creasing rents after May 31, 1978, would have a larger need for additional gross income to take care of maintenance deferred in the period of no increases. The rationale appears speculative and the reasoning, therefore, somewhat weak, but the court cannot say that there is no rational relationship to a legitimate legislative purpose.

The County's justification also finds some support in the fact that a landlord is not necessarily adversely affected by the ordinance, depending on when and how much rents were raised after May 31, 1978. The calculations attached as Exhibit A to the County's Points and Authorities show that the total rent collectible during the two-year period of the ordinance (which expires June 30, 1980)* can, in certain circumstances, equal or exceed that of landlords who have not increased rents since May 31, 1978. The showing tends to negate punitive intent.

There being a sufficient showing of a nonpunitive purpose, the court is constrained to hold that the challenged provisions are not invalid under the Bill of Attainder Clause.

---

*Since extended and still in force.

APPENDIX B.

Opinion of the California Court of Appeal.

In the Court of Appeal of the State of California, Second Appellate District, Division Two.

Alpha Standard Investment Company, Plaintiff and Appellant, v. County of Los Angeles, a body corporate and politic, Defendant and Respondent. 2d Civ. No. 59913 (Super. Ct. No. C-295024).

Filed April 20, 1981.

Appeal from a judgment of the Superior Court of Los Angeles County. Harry L. Hupp, Judge.

Before: Roth, Presiding Justice, and Fleming and Compton, Associate justices.

We discuss the constitutional validity of those portions of County Rent Regulation Ordinance No. 11950 enacted by the Board of Supervisors of Los Angeles County which spell out the procedure and the limitations within which landlords who did not demand a rent increase between May 31, 1978 and July 22, 1979 could increase rents over the base rent charged on May 31, 1978, and those who did could not. The Ordinance permits those who did not so raise rents an increase of 15.56% and limits those who did to a 7½% increase.

Appellant does not question the basic right of the Board to exercise its legislative power to relieve a housing shortage by economic regulation nor is it urged that the Board was motivated by any motive other than a sincere attempt to effect a comprehensive plan whereby relief in the housing situation would be granted to tenants and under which landlords would receive a just and reasonable return on their rental units.

Appellants sought a preliminary injunction in the trial court and the sole issue raised in that court and reiterated

before us is that the Ordinance in the particulars referred to has the effect of and is a bill of attainder.

On January 7, 1980, the trial court herein made its minute order reciting additional pertinent facts as follows:

> "This application for preliminary injunction was previously submitted. It is now denied.
>
> "At stake is a challenge to the portion of the [Los Angeles] County's rent control ordinance which allows a larger percentage increase in rents to landlords who have not raised rents since May 31, 1978, than to those who have. Plaintiff, a landlord who increased its rents since May 31, 1978, challenges the constitutionality of the relevant portion of the ordinance as a 'Bill of Attainder.' A reading of plaintiff's excellent points and authorities quickly disabuses one of any notion that the challenge is frivolous or lightly made despite its uniqueness. A substantial argument is made and must be dealt with on that basis.
>
> "A bill of attainder is 'punishment' directly inflicted by the legislature on a person or specified class for an action or status taken or existing prior to the date of the enactment. Historically, it involved the punishment of death legislatively imposed, but by judicial construction in the United States, the Bill of Attainder Clause also prohibits a 'bill of pains and penalties' by which lesser punishment (banishment, punitive seizure of property, imprisonment, etc.) is legislatively imposed on a particular individual or class."
>
> "Sections 4B and 4C of Ordinance 11,950 read as follows:
>
> > " 'B. For a rental unit which has not had a rent increase (whether imposed by the landlord or any predecessor landlord) since May 31, 1978, the landlord may increase the rent for said rental unit by an amount not to exceed 7.5 percent.

" 'C. A landlord may increase the rent on any rental unit not more often than once within the twelve (12) month period following the effective date of this ordinance by an amount not to exceed 7.5 percent. Any increase in rent pursuant to this paragraph shall be in addition to any increase in rent pursuant to paragraph B of this section. . . .' "

"The ordinance questioned here singles out a particular class — landlords who have legally raised rents after May 31, 1978 — and provides that they may not raise rents to the same level which may be used by other landlords who have not so raised rents. Accordingly, it must be said that the legislative body has singled out a particular class and imposed consequences on it not imposed on others by reason of action not illegal when done. If the difference in treatment may be said to be 'punishment,' the treatment imposed would appear to fall under the prohibition of the Bill of Attainder Clause.

"The focus of the case, therefore, must be as to whether the treatment of plaintiff (and others in the same category) is 'punishment' within the meaning of the Bill of Attainder Clause.

"The most recent expression of the U.S. Supreme Court on the problem is *Nixon v. Administrator of General Services*, 433 U.S. 425, 53 L.Ed.2d 867, 97 S.Ct. 2777 (1977), where a congressional enactment regulating control of Mr. Nixon's papers was challenged as a bill of attainder. The portion of Justice Brennan's opinion on the bill of attainder point was apparently concurred in by 6 justices and is taken by this court as the definitive guide to the question of what is 'punishment' for purposes of a bill of attainder.

"Justice Brennan first makes the point that (433 U.S. at pp. 472-473):

" 'Forbidden legislative punishment is not involved merely because the act imposes burdensome consequences. Rather, we must inquire further whether Congress . . . 'inflicted punishment' within the constitutional proscription against bills of attainder.' "

"Accordingly, 'burden' alone does not punishment make.

"The opinion then discusses three approaches to determining whether the legislatively inflicted burden or consequence is 'punishment.' In essence, they are:

"1. An historical approach, examining whether the burden is like those usually associated with bills of attainder or bills of pains and punishments.

"2. A motivational approach, examining whether a desire to penalize is discernible in the legislative history.

"3. A functional approach, examining the question of whether the burden imposed 'can be said to further nonpunitive legislative purposes.'

"The first two categories may be quickly discarded here. First, nothing like the traditional death, imprisonment, banishment, or property seizure consequence of prior action has been imposed by the Board of Supervisors. Second, no convincing evidence of punitive (as opposed to regulatory) intention is presented from the legislative consideration of the ordinance. Justice Brennan's words seem opposite [sic] here (433 U.S. at 480):

" '. . . . the decided absence from the legislative history of any congressional sentiments expressive of this purpose [motivation to punish] is probative of nonpunitive intentions and largely undercuts a major concern that prompted the bill of attainder prohibition; the fear that the legislature, in seeking to pander to an inflamed popular constituency, will

find it expedient openly to assume the mantle of judge — or worse still, lynch mob.' "

"Accordingly, the 'functional' approach is the critical one here. The Brennan opinion says (433 U.S. at 475-482):

" 'But our inquiry is not ended by the determination that the Act imposes no punishment traditionally judged to be prohibited by the Bill of Attainder Clause. Our treatment of the scope of the Clause has never precluded the possibility that new burdens and deprivations might be legislatively fashioned that are inconsistent with the bill of attainder guarantee. The Court, therefore, often has looked beyond mere historical experience and has applied a functional test of the existence of punishment, analyzing whether the law under challenge, viewed in terms of the type and severity of burdens imposed, reasonably can be said to further nonpunitive legislative purposes . . . Where such legitimate legislative purposes do not appear, it is reasonable to conclude that punishment of individuals disadvantaged by the enactment was the purpose of the decisionmakers. [sic] The [Presidential Recordings and Material Preservation] law plainly must be held to be an act of nonpunitive legislative policymaking. Legislation designed to guarantee the availability of evidence for use at criminal trials is a fair exercise of Congress' responsibility to the due process of law in the fair administration of criminal justice . . . .' "

"In short, we are looking for a 'legitimate legislative purpose' to justify the burden placed on a particular class. While the language used is similar to that commonly found in Equal Protection Clause analysis, its function here is different; if a 'legitimate legislative

purpose' is found, it leads to the conclusion that the legislative 'purpose' was not 'punishment.'

"We turn, therefore, to the County's justification for the burden placed on the class. Nothing in the 'Declaration of Purpose' enacted with the ordinance bears on the question at issue. However, County Counsel offers the following explanation of the difference in treatment among landlords:

"In the instant case, there is a rational relationship to a legitimate legislative purpose. Recognizing the severe shortage of residential rental housing and the risings rents exploiting such shortage, the Board of Supervisors sought to restrict rents as much as possible while at the same time permitting landlords in all cases to realize a just and reasonable return on their rental units. Thus, under the statutory scheme, all landlords were permitted to charge, without special application to the County Rent Adjustment Commission, the rent in effect on May 31, 1978, plus 7½% thereof. However, the Board of Supervisors recognized that there were some landlords who had not increased rents for an appreciable period of time. In many cases this occurred where landlords wished to cooperate with and treat kindly those senior citizens on fixed incomes finding it increasingly more difficult to live within their budget. However, many landlords foregoing such rental increases may have deferred maintenance and upkeep of their buildings. Because of such deferred maintenance and for other reasons, it is likely that in many cases the May 31st rent plus 7½% would be insufficient to permit these landlords to realize a just and reasonable return. Thus by permitting these landlords an additional 7½%, the number of special applications for a rent increase based on the inability to obtain a just and reasonable return would be reduced.

"It might also be pointed out that since such landlords had not in the past exploited the critical shortage of rental housing, it could reasonably be assumed that rent increases would be imposed in the future on a limited and reasonable basis and that the danger of exploitation would not be present.' "

"In essence, the reasoning is that the number of administrative proceedings to obtain extra increases would be reduced. The reasoning appears to be that landlords not increasing rents after May 31, 1978, would have a larger need for additional gross income to take care of maintenance deferred in the period of no increases. The rationale appears speculative and the reasoning, therefore, somewhat weak, but the court cannot say that there is no rational relationship to a legitimate legislative purpose.

"The County's justification also finds some support in the fact that a landlord is not necessarily adversely affected by the ordinance, depending on when and how much rents were raised after May 31, 1978. The calculations attached as Exhibit A to the County's Points and Authorities show that the total rent collectible during the two-year period of the ordinance (which expires on June 30, 1980)* since extended, and still in force can, in certain circumstances, equal or exceed that of landlords who have not increased rents since May 31, 1978. The showing tends to negate punitive intent.

"There being a sufficient showing of a nonpunitive purpose, the court is constrained to hold that the challenged provisions are not invalid under the Bill of Attainder Clause."

Appellant contends the determination so articulated is in error. Thus it is urged that:

"Relying on the opinion of Mr. Justice Brennan in *Nixon v. General Services Administration*, 433 U.S.

*Since extended, and still in force

425 (1977) Judge [Harry L.] Hupp utilized a 'rational legislative purpose' test to determine if the questioned sections of the County Rent Control Law were punitive, and thus an attainder. Appellant takes issued [sic] with this approach for five reasons:

"A. The *Nixon* case was the classic example of a 'hard case' — one where the necessity of articulating a ratio decidendi automatically put it at war with established precedent.

"B. Mr. Justice Brennan's opinion was not that of the Supreme Court, but only of himself, Mr. Justice Stewart and Mr. Justice Marshall. It did not command a majority of the justices, and is therefore not binding as stare decisis.

"C. The decisions of the California Supreme Court establish that in the area of fundamental civil liberties, the California courts are free to establish greater protection under the California Constitution than is accorded by the United States Supreme Court in interpreting textually parallel provisions of the Federal Constitution.

"D. The 'rational legislative purpose' test, formulated in equal protection cases challenging economic legislation, is an inapposite import in the Bill of Attainder area, involving, as it does, one of the most fundamental of all libertarian guarantees contained in both our Federal and State Constitutions.

"E. Even the United States Supreme Court does not follow a 'rational legislative purpose' test in Bill of Attainder cases." [Citing *United States v. Brown* (1965) 381 U.S. 437.]

Respecting appellant's first and second points of departure, it is enough to say that whether or not the *Nixon* case was "hard," our reading of it in no wise discloses it is "at war" with established precedent, but rather that it is entirely consistent therewith, albeit upon its own particular and peculiar facts. Moreover, it is not true that Mr. Justice

Brennan's opinion was only that of himself, Mr. Justice Stewart and Mr. Justice Marshall, since it was expressly concurred in, so far as the issue of attainder was concerned, by Justices Blackmun and Powell[1] and, for all practical purposes, by Justice Stevens.

Appellant's third "reason," while no doubt validly expressing a settled principle of the law of this state (see *People v. Brissendine* (1975) 13 Cal.3d 528), does not, of course, operate so as to require the result sought, which on the facts present seems to us neither necessary nor desirable.

Finally, appellant's two remaining points are, in our view, without support. Not only does a cursory perusal of *Nixon* indicate the importance of legislative purpose in inquiries like that at bench, but that case specifically concluded that:

> "[*United States v. Brown, supra,* 381 U.S. 437] left undisturbed the requirement that one who complains of being attainted must establish that the legislature's action constituted punishment and not merely the legitimate regulation of conduct. Indeed, just three Terms later, United States v. O'Brien, 391 US 367, 388 n. 30, 20 L Ed 2d 672, 88 S Ct 1673 (1968), which, like Brown, was also written by Mr. Chief Justice Warren, reconfirmed the need to examine the purposes served by a purported bill of attainder in determining whether it in fact represents a punitive law." (*Nixon v. Administrator of General Services, supra,* 433 U.S. 425, 476, fn. 40.)

Conceding that the manner in which an ordinance is drafted is not dispositive on the issue whether it is an at-

---

[1]Thus, Justice Blackmun stated, "I specifically join Part VII (concerning the Bill of Attainder Clause) of the Court's opinion," while Justice Powell allowed that, "I join the judgment of the Court and all but Parts IV and V of its opinion." (*Nixon v. Administrator of General Services, supra,* 433 U.S. 425, 492.)

tainder and that legislation fair upon its face may yet fall within constitutional proscriptions against such bills, we are satisfied the ordinance at issue here is not thus defective and, accordingly, we affirm Judge Hupp's reasoning as embodied in the order appealed from.

The order is affirmed.

CERTIFIED FOR PUBLICATION.

/s/ Roth P.J.
ROTH

We concur:

/s/ Fleming, J.
FLEMING

/s/ Compton, J.
COMPTON

APPENDIX C.

Order of the California Supreme Court.

Clerk's Office, Supreme Court, 4250 State Building, San Francisco, California 94102.

June 17, 1981.

I have this day filed Order HEARING DENIED.

In re: 2/Civ No. 59913, Alpha Standard Investment Co. vs. County of Los Angeles,

Respectfully,
Clerk

APPENDIX D.

Los Angeles County Rent Control Ordinance, Sections 3(A), 3(B), 3(C), 4(B), and 4(C).

Section 3(A): "Except as provided in paragraph B of this section, commencing with the effective date of this Ordinance, no landlord shall demand, accept, or retain more than the rent in effect on a rental unit as of May 31, 1978, or if not rented to one or more of the same persons since May 31, 1978, the rent in effect immediately upon occupancy of the rental unit by one or more of the same persons in possession on the effective date of this Ordinance."

Section 3(B): "If the rent in effect on July 21, 1979 does not exceed the rent referred to in paragraph A plus 7½% thereof, the landlord may continue to demand, accept and retain said rent. In that event, however, the landlord may not increase the rent pursuant to Sections 4.B or 4.C"

Section 3(C): "If the rent in effect on July 21, 1979 exceeds the rent referred to in paragraph A plus 7½% thereof, the landlord may demand, accept and retain the rent referred to in paragraph A plus 7½% thereof. In that event, however, the landlord may not increase the rent pursuant to Sections 4.B or 4.C"

Section 4(B): "For a rental unit which has not had a rent increase (whether imposed by the landlord or any predecessor landlord) since May 31, 1978, the landlord may increase the rent for said rental unit by an amount not to exceed 7.5 percent."

Section 4(C): "A landlord may increase the rent on any rental unit not more often than once within the twelve (12) month period following the effective date of this ordinance by an amount not to exceed 7.5 percent. Any increase in rent pursuant to this paragraph shall be in addition to any increase in rent pursuant to Paragraph B of this section."